IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 1787 of 2002 (S/B)

Date of decision: 11th August, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1787 of 2002 (S/B)

1. Rajneesh Kumar S/o Sri Suggan Singh,
   R/o Ward No. 11, Landhaura,
   Tehsil Roorkee, District Haridwar.
2. Smt. Sunita W/o Sri Sanjay Kumar,
   R/o 8- Vichara Nand Marg,
   Laxman Chowk, Dehradun.
3. Smt. Uma Joshi W/o Sri S.C. Joshi,
   R/o House No. B-6, Officers Hostel,
   Race Course, Dehradun …….. Petitioners

Versus

1. Registrar, Co-operative Societies,
   Uttaranchal, Dehradun.
2. District Co-operative Bank Ltd.,
   Haridwar.
   Through its Secretary / General Manager.
3. Administrator, District Co-operative Bank Ltd.,
   Haridwar / District Magistrate,
   Haridwar. …….. Respondents

Mr. Manoj Tewari, Advocate for the petitioners.
Mr. N.C. Gupta, Standing Counsel for respondent No. 1.
None for respondents Nos. 2 & 3.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Petitioners Rajneesh Kumar, Smt. Sunita and Smt. Uma Joshi have filed this writ petition for the following reliefs:

> "A. To issue a writ order or direction in the nature of certiorari for quashing the impugned orders dated 9.12.2002 passed by Respondent No. 1 and the consequential orders dated 11.12.2002 passed by Respondent No. 2.
>
> B. To issue a writ order or direction in the nature of mandamus commanding the Respondents to grant all consequential service benefits including arrears of salary and seniority to the Petitioners.
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> C. To issue any other suitable writ order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

D. To award the cost of the writ petition in favour of the Petitioners."

2. The petitioners, in substance, are challenging the order dated 09.12.2002 (Annexure No. 12), whereby their appointments were cancelled and the consequential orders dated 11.12.2002 (Annexures Nos. 13, 14 & 15) relieving them from their duties.

3. The petitioners' case is that they were appointed as Clerk-cum-Cashier (Group III) by the Management Committee of District Cooperative Bank, Haridwar vide appointment orders dated 22.12.2001 (Annexures Nos. 3, 4 & 5) and they joined their duties on 24.12.2001. The Secretary and Chairman of District Cooperative Bank Ltd., Haridwar vide letter dated 05.03.2002 (Annexure No. 6) recommended that the petitioners be appointed on the regular posts of Clerk-cum-Cashier. The Registrar, Cooperative Societies regularised the petitioners' services on the said post vide order dated 06.03.2002 (Annexure No. 7). The General Manager of the Bank then appointed the petitioners on temporary basis vide their appointment orders dated 20.03.2002 (Annexures Nos. 8, 9 & 10). The Board of Directors of the Bank, in the meeting held on 08.04.2002, approved the temporary appointment of the petitioners vide its resolution (Annexure No. 11). The Registrar, Cooperative Societies, without any rhyme or reason, has cancelled their appointments vide order dated 09.12.2002 (Annexure No. 12) followed by the consequential orders (Annexures Nos. 13, 14 & 15) relieving them from their duties. The petitioners are seeking quashing of these orders (Annexures Nos. 12, 13, 14 & 15) on the ground that these orders have been passed without following the 'Principles of Natural Justice' inasmuch as that the petitioners were not heard at all.

4. Counter affidavits have been filed on behalf of respondent No. 1 Registrar, Cooperative Societies, Uttaranchal, Dehradun and Respondent No. 3 Administrator, District Cooperative Bank Ltd., Haridwar / District Magistrate, Haridwar.

5. In the counter affidavit of respondent No. 1, it is stated that permission from this respondent was obtained without disclosing that the petitioners were appointed against the Rules, Regulations and Government Orders regarding appointments in the Cooperative Banks and without following the prescribed procedure. The Registrar has justified his order (Annexure No. 12), whereby petitioners' appointments were cancelled on the ground that as soon as it came to his notice that the Management Committee of the District Cooperative Bank appointed the petitioners against the Rules and Government Orders and without advertising the vacancies in daily news papers and inviting applications from other aspirants, the petitioners could not have been allowed to continue in service. The relevant averments are contained in paras 10 and 12 of the counter affidavit, which read as follows:

> "10. That in reply to the contents of para nos. 10 & 11 of the petition it is submitted that though the permission to appointment the employees was given by the respondent but the permission is always granted as per Rule and granting the permission does not mean that the Bank would made appointment violating the Rules and moreover the committee of management keeping, the Registrar, Cooperative Societies in dark regarding the mode of appointment of the petitioners took approval to regularize the petitioners. That when the respondent came to know about the mode of appointment of the petitioners he issued a notice to District Cooperative Bank, Haridwar to cancel the appointment of the employees.
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> 12. Than in reply to the contents of para no. 14 of the writ petition it is stated that it is wrong to state that Board of Directors is the final authority in the Bank to take policy decision and also to make appointments. In this regard, it is submitted that the respondent has given approval to the District Cooperative Bank, Haridwar for appointing three class III employees on ad hoc basis. Further, it is stated that the Management of District Cooperative Bank flouted laid down norms and guidelines of Hon'ble Supreme Court for appointment which were widely circulated by U.P. Cooperative Institutional Board by its order no. C-6-37 dated 14.08.97, copy whereof is annexed herewith and is marked as **ANNEXURE NO. CA. 1** to this counter affidavit by which the appointment in all the banking cadres must be made through advertisement in a daily newspaper. Despite the knowledge of the

> aforementioned order the committee of management flouted the laid down Rules and accordingly when the respondent came to know about the wrong procedure adopted by the committee of management he at once cancelled the appointment of employees through its order 673/VIBHE/2002 dated 9.12.2002. The copy of said order is annexed as ANNEXURE NO. 12 to this petition."

6. Third respondent, Administrator, District Cooperative Bank, Haridwar / District Magistrate, Haridwar, in his counter affidavit, has supported the order of cancellation of petitioners' appointment. This respondent has justified the impugned order on the plea that though the petitioners were appointed by the Cooperative Bank purely on ad-hoc basis, these appointments were made against the Rules and Government Orders and without following the prescribed procedure. It is further stated by this respondent that as the appointments of the petitioners were cancelled by the Registrar within their probation period, no opportunity of hearing was required to be given to the petitioners.

7. On a perusal of the impugned order dated 09.12.2002 (Annexure No. 12), it becomes apparent that the petitioner were appointed in flagrant violation of the Rules and the prescribed procedure for recruitment. The vacancies were never advertised. No opportunity was given to other aspirants. The petitioners' appointments are nothing but backdoor entry in the service, which can never get the stamp of approval from Court of Law.

8. Mr. Manoj Tewari, the learned counsel for the petitioners could not demonstrate that the petitioners were appointed by the Management Committee of the District Cooperative Bank after following the prescribed procedure.

9. The Apex Court, while considering the challenge to the termination of services of the persons appointed without following the prescribed procedure in the case of **State of U.P. Vs. Neeraj Awasthi and others** reported in **(2006) 1 SCC 667**, observed in paras 75 & 76:

> "75. The fact that all appointments have been made without following the procedure, or services of some persons appointed have been regularised in the past, in our opinion, cannot be said to be a normal mode which must receive the seal of the court. Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. The State and the Board were bound to take steps in accordance with law. Even in this behalf Article 14 of the Constitution will have no application. Article 14 has a positive concept. No equality can be claimed in illegality is now well settled. (*See State of A.P. v. S.B.P.V. Chalapathi Rao, SCC para 8; Jalandar Improvement Trust v. Sampuran Singh,* SCC para 13 *and State of Bihar v. Kameshwar Prasad Singh,* SCC para 30.)
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> 76. In the instant case, furthermore, no post was sanctioned. It is now well settled when a post is not sanctioned, normally, directions for reinstatement should not be issued. Even if some posts were available, it is for the Board or the Market Committee to fill up the same in terms of the existing rules. They, having regard to the provisions of the Regulations, may not fill up all the posts."

10. As the petitioners were appointed without following the prescribed procedure, no right was created in their favour to continue on the said posts. As the petitioners s justified their appointments which were made dehors Rules and Regulations and without following the prescribed procedure, denial of opportunity of hearing does not render the impugned orders (Annexures Nos. 12, 13, 14 & 15) illegal.

11. The Apex Court, in the case of **Neeraj Awasthi** (supra) while considering the applicability of 'Principles of Natural Justice' to such cases, observed in paras 47 to 49:

> ***"Natural justice***
>
> 47. If the employees are workmen within the purview of the U.P. Industrial Disputes Act, they are protected thereunder. Rules 42 and 43 of the U.P. Industrial Disputes Rules provide that before effecting any retrenchment in terms of the provisions of Section 6-N of the U.P. Industrial Disputes Act, the employees

concerned would be entitled to a notice of one month or in lieu thereof pay for one month and 15 days' wages for each completed year of service by way of compensation. If such a retrenchment is effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise. The principle of natural justice would be attracted only when the services of some persons are terminated by way of a punitive measure or thereby a stigma is attached. [See *Suresh Chandra Verma (Dr.) v. Chancellor, Nagpur University*, SCC para 16*; Karnataka Public Service Commission v. B.M. Vijaya Shankar*, SCC paras 4 and 5 *and State of M.P. v. Shyama Pardhi*, SCC paras 4 and 5.]

48. *In Viveka Nand Sethi v. Chairman, J&K Bank Ltd.* It was held: (SCC p. 345, para 22)

> "22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [*See Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash.*] The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case."

49. The High Court, therefore, must be held to have erred in law in holding that the principles of natural justice were required to be complied with."

12. The petitioners' initial appointments being contrary to the Rules and the prescribed procedure, we do not find any infirmity in the impugned order dated 09.12.2002 (Annexure No. 12), whereby their appointments were cancelled and the consequential orders dated 11.12.2002 (Annexures Nos. 13, 14 & 15), whereby they were relieved from their duties.

13. The Apex Court, in a recent judgment in the case of **Secretary, State of Karnataka & Others Vs. Umadevi & Others** reported in **2006 AIR SCW 1991**, while examining the legal status of those appointments which were made against the Rules and Schemes and without following the prescribed procedure, observed in paras 1 and 2:

> "1. Public employment in a sovereign socialist secular democratic republic, has to be as set sown by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hall-mark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.
>
> 2. A sovereign government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. Going by a law newly enacted, The National Rural Employment Guarantee Act, 2005, the object is to give employment to at least one member of a family for hundred days in an year, on paying wages as fixed under that Act. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule."

14. Further examining the scope of interference in the matter of such appointments by the High Court under Article 226 of the Constitution of India, the Apex Court in the case of **Umadevi** (supra) observed in para3:

> "3. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissioner or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not always kept the legal

aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment' has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitutional is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten."

15. Laying down that grant of any relief in favour of such appointees would necessarily mean paying a premium for defiance and insubordination by those concerned who engaged these persons, the Apex Court in the case of **Umadevi** (supra) observed in para 47:

> "47. Coming to Civil Appeal Nos. 1861-2063 of 2001, in view of our conclusion on the questions referred to, no relief can be granted, that too to an indeterminate number of members of the associations. These appointments or engagements were also made in the teeth of directions of the Government not to make such appointments and it is impermissible to recognize such appointments made in the teeth of directions issued by the Government in that regard. We have also held that they are not legally entitled to any such relief. Granting of the relief claimed would mean paying a premium for defiance and insubordination by those concerned who engaged these persons against the interdict in that behalf. Thus, on the whole, the appellants in these appeals are found to be not entitled to any relief. These appeals have, therefore, to be dismissed."

16. For the foregoing reasons, the reliefs sought by the petitioners in the writ petition cannot be granted. The writ petition, therefore, is liable to be dismissed and is hereby dismissed.

17. Consequently, the interim order dated 14.12.2002 stands vacated automatically.

18. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C. J.)**
11.08.2006 11.08.2006

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